

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO
20.3.1 NMAC, 20.3.3 NMAC,
20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC,
20.3.12 NMAC, AND 20.3.15 NMAC**

No. EIB 21-09

**Radiation Control Bureau,
Environmental Protection Division of the
New Mexico Environment Department,**

Petitioner.

ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the Radiation Control Bureau (“Bureau”) of the Environmental Protection Division (“Division”) of the New Mexico Environment Department (“Department”) on March 5, 2021, to amend 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, and 20.3.15 NMAC. A public hearing was held on June 25, 2021, with a quorum of the Board present during the hearing. The public hearing was held via internet (Zoom) and via telephone due to the concerns surrounding the Novel Coronavirus (“COVID-19”) and in accordance with Governor Michelle Lujan Grisham's Declaration of a Public Health Emergency in Executive Order 2020-004, and subsequent executive orders; various Public Health Emergency Orders limiting mass gatherings due to COVID-19; and the Office of the Attorney General’s Open Government Division’s Guidance to Public Entities Regarding the Open Meetings Act and Inspection of Public Records Act Compliance During COVID-19 State of Emergency.

The Board heard technical testimony from the Department and admitted exhibits into the record. On June 25, 2021, the Board deliberated and voted to amend the regulations for the reasons that follow:

I. STATEMENT OF REASONS

1. Pursuant to 20.1.1.300(A) NMAC, any person may petition the Board to adopt, amend, or repeal any regulation within the jurisdiction of the Board.
2. On March 5, 2021, the Bureau filed a petition with the Board for a public hearing in this matter. On March 26, 2021, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Bureau's request for a hearing and scheduled the hearing for June 25, 2021, and continuing thereafter as necessary.
3. Public notice of the hearing was published in English and Spanish in three publications: the Albuquerque Journal, the New Mexico Register, and the Santa Fe New Mexican (**NMED Exhibits 10-13**), on April 14, 20, and 29, 2021. The notice stated that the Board may make a decision on the proposed regulations at the conclusion of the hearing or may convene at a later date to consider action on the proposal.
4. Public notice requirements in compliance with NMSA 1978, Section 14-4-5.2 (2017), as incorporated into the Board's rulemaking regulations in 20.1.1.300(A) NMAC and 20.1.1.7(N) NMAC, were met (**NMED Exhibits 14-17**).
5. As required by NMSA 1978, Section 14-4A-4 (2005), the public notice was provided to the Small Business Regulatory Advisory Commission via email on April 6, 2021 (**NMED Exhibit 23**). On May 3, 2021, the Small Business Regulatory Advisory Commission informed the Department that the proposed amendments will not pose a hardship to small businesses. (**NMED Exhibit 24**).

6. Pursuant to NMSA 1978, Section 74-3-5(A) (2000), the proposed amendments were provided to the Radiation Technology Advisory Council (“RTAC”) at its March 3, 2021, meeting (**NMED Exhibit 25**). The RTAC approved the amendments as proposed (**NMED Exhibit 27**).
7. NMED filed a Notice of Intent to Present Technical Testimony (“NOI”) on June 2, 2021, in accordance with 20.1.1.302 NMAC.
8. A hearing in this matter was held via internet (Zoom) and telephone at which a reasonable opportunity for all persons to be heard was provided.
9. Pursuant to NMSA 1978, Section 74-3-15 (1977), the State of New Mexico (“State”) administers the Radiation Protection Program through an agreement between the United States Nuclear Regulatory Commission (“NRC”) and the State titled “Agreement Between the United States Atomic Energy Commission and the State of New Mexico for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended” executed on April 3, 1974 (“Agreement”). The Agreement provides for discontinuance of the regulatory authority of the NRC and acceptance of that authority by the Board and Environmental Protection Division of the Department. § 74-3-15. For the duration of the Agreement, the Board shall have the authority to regulate the radioactive materials covered by the Agreement for the protection of the public health and safety and the environment from radiation hazards. *Id.*
10. As an agreement state under 42 U.S.C. § 2021 and NMSA 1978, Section 74-3-15, New Mexico's state regulations must be compatible with the NRC’s regulations. 42 U.S.C. § 2021(d)(2).

11. The compatibility requirement is met through the promulgation of state regulations when necessary.
12. New Mexico must maintain a compatible and adequately staffed radiation control program to keep its agreement status.
13. Failure to maintain compatibility with NRC regulations jeopardizes the Agreement between the State and the NRC potentially subjecting New Mexico businesses currently licensed by the State to significantly higher fees if licensed by the NRC.
14. The Bureau is also taking this opportunity to clarify the existing regulations, fix minor and typographical errors, and update citations based on the federally required changes.
15. The Department has the duty to maintain, develop and enforce New Mexico's radiation regulations to align with their federal counterparts as required by the Agreement between the State and the NRC. NMSA 1978, § 74-1-7(A)(5) (2000).
16. The Board has the authority to promulgate radiation control rules and standards pursuant to NMSA 1978, Section 74-1-8(A)(5) (2020), NMSA 1978, Section 74-1-9 (1985), and Section 74-3-5(A).
17. In considering the proposed amendments, the Board is required, by NMSA 1978, Section 74-1-9, to give the weight it deems appropriate to all facts and circumstances, including but not limited to (1) character and degree of injury to or interference with health, welfare, animal and plant life, property, and the environment; (2) the public interest, including the social, economic, and cultural value of the regulated activity and the social, economic, and cultural effects of environmental degradation; and (3) technical practicability, necessity for and economic reasonableness of reducing, eliminating or otherwise taking action with respect to environmental degradation.

18. The Board considered all facts and circumstances and concluded that the proposed amendments do not cause injury to or interfere with health, welfare, animal, and plant life, property, and the environment. The Board found the proposed revisions to be technically practical, economically reasonable, and in the public interest. The Board concludes that the factors specified by NMSA 1978, Section 74-1-9 all weigh in favor of adopting the proposed revisions.
19. Adoption of the amendments to 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, and 20.3.15 NMAC will allow New Mexico to become compatible with the current federal regulations and will provide consistency between the federal and state regulations.
20. The notice and hearing requirements of NMSA 1978, Section 14-4-5.2, Section 74-1-9, Section 74-3-5(A), Section 14-4A-4, and 20.1.1 NMAC were satisfied in this rulemaking process.
21. The Board hereby approves of the proposed amendments to 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, and 20.3.15 NMAC as they are written in **NMED Exhibit 1**, for the reasons stated above.

ORDER

By a unanimous vote of a quorum of the Board members, the proposed adoption of the amendments to 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, and 20.3.15 NMAC, as contained in NMED Exhibit 1 of the Department's June 2, 2021, Notice of Intent to Present Technical Testimony, were approved by the Board on June 25, 2021. Annotations to 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, and 20.3.15 NMAC, with any appropriate corrections of typographical errors or

formatting, shall be filed with the New Mexico State Records Center as expeditiously as possible by the Department.

SIGNED this 10 day of July, 2021.

A handwritten signature in cursive script, reading "Phoebe K. Suina".

Phoebe Suina, Chair
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